163 US 680

TRANSCRIPT OF RECORD.

163–680

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~609~~. 302

THE UNITED STATES, APPELLANT,

vs.

CERTAIN REAL ESTATE KNOWN AS THE TITHING YARD AND OFFICES, AND WILLIAM B. PRESTON ET AL., TRUSTEES.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED DECEMBER 4, 1893.

(15461.)

SUPREME COURT OF THE UNITED STATES.

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No. 609.

THE UNITED STATES, APPELLANT,

vs.

CERTAIN REAL ESTATE KNOWN AS THE TITHING YARD AND OFFICES, AND WILLIAM B. PRESTON ET AL., TRUSTEES.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

INDEX.

	Original.	Print.
Caption	a	1
Transcript from district court	1	1
Complaint	1	1
Answer	9	5
Petition in intervention	19	10
Answer to petition in intervention	27	15
Findings of fact	27½	15
Conclusions of law	33	18
Judgment	35	19
Notice of appeal	38	21
Assignment of errors	39	21
Stipulation as to record, &c	41	22
Order taking cause under advisement	42	23
Judgment	43	23
Opinion	44	24
Citation and proof of service of same	55	29
Assignment of errors	58	31
Clerk's certificate	61	32

a In the third judicial district court, Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF and respondent,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, * * * known as the tithing yard and offices, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants and appellants. } No. 326.

Transcript.

(Indorsed:) Filed and transmitted December 3rd, 1892. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy. No. 326. Filed in the supreme court Dec. 3, 1893, at Salt Lake City, Utah. Jos. P. Bache, clerk.

1 In the third judicial district court, Territory of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: Part of lots three and four in block 88, Plat A, Salt Lake City survey, to wit: Commencing at a point 4 rods north of the southwest corner of lot 4, running thence north 16 rods, thence east 20 rods, thence south 12½ rods, thence west 14 rods, thence south 3½ rods, thence west 6 rods to the place of beginning, being a part of what is known as the tithing yard and offices. Also all of the south half of lots 5 and 6 in block 88, Plat A, Salt Lake City survey, being a part, also, of said tithing yard and offices, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

On this fifth day of November, A. D. 1890, comes W. H. H. Miller, Attorney-General of the United States, and with him Charles S. Varian, attorney for the United States for the Territory of Utah, to prosecute a civil action in which the United States are concerned, and informs the court:

That the United States of America hereby brings suit to escheat certain real property in the title herein and hereinafter particularly described, and against the defendants above named as trustees, and in this behalf complains for that—

1st. That on the 19th day of January, A. D. 1855, by an act of Territorial assembly of the Territory of Utah, the Church of Jesus Christ of Latter-day Saints became an incorporated body for religious and chari-

table purposes, and from said date continued to be a corporation of the nature and kind above set out up to and until the 3rd day of March, A. D. 1887.

2 2nd. That on the 1st day of July, A. D. 1862, the Congress of the United States passed an act entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," which said act, among other things, provided, in substance and effect, that it should not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of a greater value than $50,000, and that all real estate acquired or held by any such corporation or association contrary to the provisions of said act should be forfeited and escheated to the United States.

3rd. That on the 3rd day of March, A. D. 1887, the Congress of the United States passed an act entitled "An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes, and approved March 22nd, 1882," and in and by which said act it was provided, amongst other things, that it should be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of all corporations obtained or held in violation of the act of July 1st, 1862, above mentioned; and it was, moreover, provided by said act of Congress that the act of the legislative assembly of the Territory of Utah be hereinbefore referred to, incorporating the Church of Jesus Christ of Latter-day Saints, should, and it thereby was, disapproved and annulled, and that said corporation should be, and it thereby was, dissolved, and that it should be the duty of the Attorney-General of the United States to institute

3 and prosecute proceedings in the supreme court of the Territory of Utah for the purposes of executing the provisions of said act and to wind up the affairs of said corporation, and for other purposes set out in said act; wherefore the said corporation of the Church of Jesus Christ of Latter-day Saints , and from henceforth was, a defunct corporation.

4th. That in pursuance of the act of Congress last aforesaid, the United States Attorney-General did, on the 30th day of July, A. D. 1887, commence a suit in the name of the United States in the supreme court of the Territory of Utah for the purpose of having the dissolution of said corporation judicially ascertained and declared; and winding up of its affairs; the distribution of it as estate according to law; the appointment of a receiver pending the final determination of said suit, and for the purpose of collecting, managing, and preserving all the property of said dissolved corporation.

5th. That on the 7th day of November, A. D. 1887, the supreme court of the Territory of Utah, in the suit above named appointed a receiver for the purposes aforesaid, and in accordance with the order of said court the said receiver has heretofore taken possession of, and now holds, subject to the order of said court, a large amount of property, real and personal, formerly held and owned by said dissolved corporation, and especially the several tracts of real estate hereinafter specially described.

And for that on the 3rd day of March, A. D. 1887, when said corporation became dissolved as aforesaid, it owned and held, by and through one John Taylor, its trustee in trust, and by and through certain other persons upon secret trusts, large tracts and parcels of real estate, exceeding in value $1,0 0,000, and among others the following described parcels:

1. All of block 87 in Plat A, Salt Lake City survey, in Salt Lake County, Utah Territory, known as the Temple block, of the value of $750,000.

2. Part of lots 3 and 4 in block 88, as the same are platted and designated in Plat*e* A, Salt Lake City survey, and bounded as follows: Commencing at a point 4 rods north of the southwest corner of said lot 4, running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to the place of beginning, and being a part of what is known as the tithing office and grounds, and is of the value of $50,000.

3. All of the south half of lots 5 and 6 in block 88, as the same are platted and designated in Plat*b* A, Salt Lake City survey, said tract containing two hundred square rods of surface ground, and being a part of what is known as the tithing office and grounds, and is of the value of $25,000, all situate in Salt Lake County, Utah Territory.

And for that the west half of the real estate above described as the Temple block and all buildings and improvements upon the same, and with said block and buildings were, at the date of the dissolution of said corporation as aforesaid, used exclusively for the worship of God according to the ten*an*ts of said Church of Jesus Christ of Latter-day Saints, and which said property had been acquired by said corporation subsequently to the passage of the act of July 1st, 1862, above mentioned, and which they acquired and held in violation of said act of July 1st, 1862, being in excess of $50,000 in value, was and is exempt from the forfeiture prescribed by said act by virtue of the provisions of said act of Congress of March 3rd, 1887, and the east half of said block was and is of great value and largely in excess of $50,000.

And for that in addition to the real estate known as the Temple block, held and used as aforesaid, the said corporation of the Church of Jesus Christ of Latter-day Saints, on the 3rd day of March, A. D. 1887, when it became and was dissolved as aforesaid, had theretofore and subsequently to the passage of the act of Congress of July 1st, 1862, acquired and was at the date of its dissolution holding in the name of one Robert T. Burton, who held the same upon a secret trust the following-described pieces and tracts of real estate, to wit:

1. Part of lots three and four in block 88, as the same are platted and designated in Plat A, Salt Lake City Survey, county of Salt Lake and Territory of Utah, and bounded as follows: Commencing at a point 4 rods north of the southwest corner of said lot 4, running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods, to the place of beginning, and being a part of what is known as the tithing office and grounds.

2. All of the south half of lots 5 and 6 in block 88, as the same are platted and designated in Plat A, Salt Lake City survey, in the county

of Salt Lake, Territory of Utah, said tract containing two hundred square rods more or less of surface ground, and being a part of what is known as the tithing office and grounds.

Both of which said tracts of land is of the value of $100,000, which is all and entire in excess of the amount of real estate which said corporation was by law entitled to hold, and no part of said real estate was held or occupied by said corporation as a building or ground appurtenant
6 thereto for the purposes of the worship of God or parsonage connected therewith, or as a burial ground.

And said United States further complains: For that the defendant, Robertn T. Burton, on the 3rd day of March, A. D. 1887, held the legal title to all and singular the property hereinbefore described, in secret trust for the then corporation, "The Church of Jesus Christ of Latter-day Saints," and afterwards, to wit, on the 2nd day of July, A. D. 1887, he, the said Burton, attempted to convey the same by his deed of conveyance to himself and other defendants, William B. Preston and John R. Winder as trustees for an alleged voluntary association, described as the Church of Jesus Christ of Latter-day Saints, and to them in trust for the alleged religious and charitable purposes; that said defendants were parties defendant to the original bill filed in the supreme court of Utah Territory hereinbefore referred to, and appeared and by answer made claim to the real estate hereinbefore described; that upon a hearing evidence was heard and their said claim was finally adjudicated and determined as against them and the said late corporation of the Church of Jesus Christ of Latter-day Saints; that the deed from D'fendant Burton to the other defendants hereinbefore mentioned was made without authority and that no estate passed thereby, and the same was by final decree in said court on the 8th of October, A. D. 1888, annulled, cancelled and set aside.

That it was further adjudged and decreed by said court that the legal title and estate in said real property was acquired by said corporation above mentioned and its trustees subsequently to July 1st, A. D. 1862, and the same was the property of said corporation at the date of its dissolution to wit: March 3rd, A. D. 1887; that said decree remains of record and has never reversed or modified.

7 And said United States complains further, for that information against the hereinbefore described property and all claimants thereto was filed in this court on October 8th, 1888, and thereupon a monition issued to the United States marshal of the Territory, to seize the property, and to give due notice to all persons claiming the same, or having anything to say why it should not be escheated to the United States, to be and appear before the court at a time and place specified, then and there to make known their claims; that such notice was duly given and the property seized; that the only persons who have appeared in obedience to said monition, although the time for appearance has long since expired, are the defendants, William B. Preston, Robert T. Burton, and John R. Winder, who have entered and filed their allegations in writing whereby they make claim to said real property as trustees for an alleged voluntary religious association known as the Church of Jesus Christ of Latter-day Saints.

And the said United States upon its information and belief, alleges and complains: For that the said defendants have no other right, title, or claim

to the said property or any part thereof, except under and by virtue of the alleged conveyance of July 2nd, A. D. 1887, from Robert T. Burton, being the same which was as hereinbefore stated adjudged to be valid, and cancelled, and annulled.

And for that all of said real property as hereinbefore described was acquired by the late corporation of the Church of Jesus Christ of
8 Latter-day Saints subsequently to the 1st day of July, A. D. 1862, and after said corporation had acquired and while it held real property of the value in excess of $50,000, and the same was and is subject to forfeiture or escheat to the United States of America; that the defendants have no legal claim, estate, or title to said property or any thereof; that none of said real property or its appurtenance is or ever was held or occupied exclusively for the purposes of the worship of God or as a parsonage or as a burial ground.

Wherefore it is prayed that the real property hereinbefore and in the title described, and the whole thereof, be forfeited and escheated to the United States of America, to be disposed of according to law, and that the said United States have judgment against the defendants for their costs.

CHARLES S. VARIAN,
United States Attorney for Utah.

For W. H. H. MILLER,
Attorney-General United States.

Filed November 5th, 1890.

9 In the district court in and for the third judicial district of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: Parts of lots 3 and 4 in block 88, Plat A, Salt Lake City survey, to wit: Commencing at a point 4 rods north of the southwest corner of lot 4, running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to the place of beginning, being a part of what is known as the tithing yard and offices. Also all of the south half of lots 5 and 6 in block 88, Plat A, Salt Lake City, being a part, also, of said tithing yard and offices, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

No. 7503.

Answer.

Now comes the above-named defendants, William B. Preston, Robert Burton, and John R. Winder, trustees, and answering the complaint filed herein on the 5th day of November, 1890, deny that their claim to the

land and premises described in said complaint was ever finally adjudicated or determined against them by any court or in any action, and deny that the said property, or any part thereof, ever was or is subject to forfeiture or escheat to the United States of America.

The defendants allege that all of the land mentioned in the complaint and described as all of block 87, in Plat A, Salt Lake City survey,
10 in the county of Salt Lake and Territory of Utah, known as the Temple Block, was, on the 8th day of October, 1888, by a decree of the supreme court of the Territory of Utah, made and entered in the case of the United States of America vs. the late corporation of the Church of Jesus Christ of Latter-day Saints and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenz Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, duly set apart to the said Church of Jesus Christ of Latter-day Saints, as an unincorporated body and religious sect, to be held, managed, and controlled by these defendants for the benefit of said religious sect and body, and for the erection and use by them of the houses of worship, and for their use and convenience in the lawful exercise of worship according to the tenants of said sect and body, and that said decree remains of record and never has been reversed or modified.

The defendants, further answering, say that the plaintiff ought not to be permitted to maintain or prosecute this action, because, as defendants allege, all proceedings to forfeit or escheat such property, or any part thereof, are barred by section 1047 of the Revised Statutes of the United States, and the said action did not, nor did the alleged cause of forfeiture mentioned in the complaint, accrue within five years before the commencement of these proceedings or the filing of said complaint, or within five prior to said dissolution of said corporation.

Further answering said complaint, the defendants deny that said plaintiff, or anyone in its behalf, has the right to forfeit or escheat the property aforesaid, or to maintain said action, for the reason that the said
11 corporation of the Church of Jesus Christ of Latter-day Saints, by its officers and agents, were in the possession and occupancy of all the said premises and property hereinafter described, prior to and on the 1st day of July, 1862, the date of the passage of said act of Congress entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," approved July 1st, 1862, and that thereafter said corporation still continued in the possession and occupancy of said premises and property, openly, notoriously, and continuously, till, and a long time after, the Government of the United States, by deed of grant and for a valuable consideration, in 1872, conveyed said premises and property, with other lands in Salt Lake City, to the mayor thereof, in trust for the use and benefit of the inhabitants and occupants thereof, and that said grant was made to said mayor under the trust aforesaid, without any reservation in favor of said grantor, the plaintiff in this action; that thereafter the said corporation, the Church of Jesus Christ of Latter-day Saints, by its duly elected and acting trustee, Brigham Young, pursuant to an act of the legislative assembly of the

Territory of Utah, approved February 17th, 1869, entitled "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled 'An act for the relief of the inhabitants of cities and towns upon public lands,' approved March 2nd, 1867," filed its claim for all of said premises in the probate court of Salt Lake County, Utah Territory, and that the same was thereafter duly adjudicated by said court to said Brigham Young, and that afterwards, to wit, on
12 the 4th day of January, 1873, for a valuable consideration, the said mayor of Salt Lake City, in pursuance of said adjudication and in execution of the trust expressed in said patent, by deed in fee simple, duly conveyed said land to the said Brigham Young, who was then the trustee in trust of said church, and for its use and benefit; and that by reason of the premises aforesaid the said plaintiff was estopped from questioning the right of the late corporation of the Church of Jesus Christ of Latter-day Saints to acquire and hold said land and premises, and is now barred and estopped from forfeiting and escheating, or attempting to forfeit or escheat, said property.

Further answering, these defendants admit that the Church of Jesus Christ of Latter-day Saints became and was a corporation at the time and in the manner related in said complaint, and that the said corporation was dissolved as therein stated; that said corporation embraced and included all the members of that religious sect or body of religious worshippers known as the Church of Jesus Christ of Latter-day Saints; that from and after said dissolution of said corporation hitherto all the members of said body of religious worshippers have been, and are now, organized and existing as a voluntary religious association known as the Church of Jesus Christ of Latter-day Saints; that the member' of said voluntary religious association exceed in number two hundred thousand.

And these defendants allege:

That they are the owners of the property mentioned in said complaint and hereinafter described, and that they hold the legal title thereto as trustees for said voluntary religious association known as the Church of Jesus Christ of Latter-day Saints, in trust for religious and charitable purposes; that the said church is, and has been ever since the 3d
13 day of March, 1887, a voluntary association for religious and charitable purposes and has the right to own and hold such property, through trustees, to be used for such purposes; that the said defendants were in possession of said property at the time it was seized by the United States marshal pursuant to the information proceedings had herein, and that the said property is described as follows, to wit: Part of lots three and four in block 88, as the same are platted and designated in Plat A, Salt Lake City survey, county of Salt Lake and Territory of Utah, and bounded as follows: Commencing at a point 4 rods north of the southwest corner of said lot 4; running thence north 16 rods; thence east 20 rods; thence south $12\frac{1}{2}$ rods; thence west 14 rods; thence south $3\frac{1}{2}$ rods; thence west 6 rods to the place of beginning, and being a part of what is known as the tithing office and grounds.

All the south half of lots five and six, in block 88, as the same are platted and designated in Plat*b* "A," Salt Lake City survey, in the county of Salt Lake, Utah Territory, said tract containing two hundred square rods more or less of surface ground, and being a part of what is known as the tithing office and grounds.

That at the time of the enactment of the law of Congress of July 1st, 1862, mentioned in the complaint, and long prior thereto, the said Church of Jesus Christ of Latter-Day Saints, as a religious association, held, possessed, and occupied the above-described real estate and had a vested right to and interest in the same, and it ever since and still has such vested right to and interest in said property; and that said vested right and the defendant's claim to said property are founded upon the following facts, to wit:

14 The parts of lots three and four, in block 88, Plat "A," Salt Lake City survey, mentioned in the complaint and described herein, were taken possession of by the agents of the Church of Jesus Christ of Latter-Day Saints, for the use and benefit of said church, when Salt Lake City was first laid out and surveyed, in 1848, and ever since that time have been used and occupied by said church as a voluntary sect until it became incorporated as aforesaid, and then as a corporation, and prior to July 1st, 1862, buildings and other improvements had been built thereon by said church; at the time the said property was taken possession of as aforesaid it was a part of the public domain and continued to be such until the 21st day of November, 1871, when said land was entered in the townsite of Salt Lake City by the mayor thereof, under the act of Congress approved March 2nd, 1867, entitled "An act for the relief of inhabitants of cities and towns upon the public lands," in trust for the inhabitants and occupants thereof; Brigham Young, who was then president and trustee in trust of said corporation as such trustee and for the use and benefit of said corporation, thereafter duly filed claim for said premises in the probate court of Salt Lake County, Utah Territory, under an act of the legislative assembly of the Territory of Utah, approved February 17th, 1869, entitled "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon public lands," approved March 2nd, 1867, and thereafter the said probate court duly adjudicated the same to the said Brigham Young, as such trustee, and subsequently the said real estate was duly conveyed to him, as such trustee, by Daniel H. Wells, mayor of Salt Lake City, in pur-

15 suance of said adjudication and in execution of the trust expressed in said patent; in November, 1873, Brigham Young transferred and conveyed the said property to George A. Smith as the trustee in trust of the corporation of the Church of Jesus Christ of Latter-Day Saints and his successor in office; on the death of said George A. Smith the legal title to said premises vested in Brigham Young as such successor, and the executors of said Brigham Young transferred and conveyed the said property to John Taylor as trustee in trust of said corporation, who, in April, 1878, transferred and conveyed the same to Edward Hunter in trust for the use and benefit of said corporation; said Edward Hunter afterwards, to wit, on the 24th day of April, 1886, transferred and conveyed the same to Robert T. Burton in trust for said corporation, and on the 2nd day of July, 1887, the said Robert T. Burton conveyed the same to William B. Preston, said John R. Winder, and himself, as trustees in trust, "for the use, benefit and behoof of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, and to and for such use as said church, or its duly constituted authorities, shall name, dictate, and appoint."

Some time in the year 1856 the Church of Jesus Christ of Latter-Day Saints took possession of the south half of said lots 5 and 6, block 88, Plat "A," Salt Lake City survey, and placed valuable improvements thereon, and have continued to occupy the same, with said improvements, down to the present time; and that said lots were a portion of the townsite entry made by the mayor of Salt Lake City, as aforesaid, pursuant to said act of Congress of March 2nd, 1867.

16 The said Church of Jesus Christ of Latter-Day Saints, by its trustee, Brigham Young, duly filed claim in the probate court of Salt Lake City, Utah Territory, under said townsite act of the legislative assembly of said Territory of Utah, approved February 17th, 1869, for the south half of said lots 5 and 6, and the said court duly adjudicated all of said premises to the said Brigahm Young, and thereafter the mayor of said Salt Lake City, in pursuance of said adjudicatdion and in the execution of said trust expressed in said patent, duly conveyed the same to Brigham Young, who was then trustee in trust for said church, and took and held the same under such deed for its use and benefit.

At the time the said act of Congress of March 3rd, 1887, mentioned in the complaint, took effect the legal title to said premises was held by Robert T. Burton in trust for the use and benefit of the Church of Jesus Christ of Latter-Day Saints, and on the 2nd dav of July, 1887, the said Robert T. Burton conveyed the same to William B. Preston, John R. Winder, and himself, as trustees on the trusts aforesaid.

The defendants allege that no part of said property was ever acquited or held in violation of any law of the United States, but that all of said property was acquired as aforesaid, and the purchase price thereof and the cost of said improvements thereon were paid from voluntary contributions made to the said church from time to time by the members thereof, to be held, managed, and applied by said church, through its officers and trustees, chosen and elected by the members thereof, to religious and charitable uses and purchases in which said church and its members were interested; that said property and the whole thereof was at all times prior to the time when the same was seized and taken possession of by said receiver, as mentioned in the complaint, held, used, and applied

17 by said church through its officers and trustees chosen as aforesaid, to such religious and charitable uses and purposes, and not otherwise; that at no time was the same, or any part thereof, used or applied to establish, maintain, aid, or support or encourage the practice of polygamy or plural marriage, or to any other unlawful use or purpose, and that said property was not worth more than ten thousand dollars on the 11th day of July, 1862, and that said Church of Jesus Christ of Latter-Day Saints did not then hold or own real property of a greater valud than fifty thousand dollars, including said property.

The defendants fyrther allege that the doctrine of bigamy, polygamy, or plurality of wives is not and has not been a doctrine or practice of the said Church of Jesus Christ of Latter-Day Saints since the 6th day of October, 1890, nor has the practice thereof since then been indulged, recognized, encouraged, or countenanced by any of the authorities or members of said church, but the same was, on the date last aforesaid, permanently abandoned and prohibited by said church.

Wherefore these defendants pray that they be by this court adjudged and decreed to hold said property and the whole thereof as trust as for said church or voluntary religious association, in trust for the religious and charitable purposes and uses thereof.

F. S. RICHARDS,
LE GRAND YOUNG,
DICKSON & STONE,
Attorneys for Defendants.

TERRITORY OF UTAH,
County of Salt Lake, ss:

18 John R. Winder, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has heard read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except a' to matters and theing' therein stated on information and belief; as to those matters, he believes it to be true.

JOHN R. WINDER.

Subscribed a*b*d sworn to before me this 14th day of September, A. D. 1891.

JAMES H. MOYLE,
Notary Public.

Filed September 14th, 1891.

19 In the district court for the third judicial district of Utah Territory, county of Salt Lake.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: Part of lots 3 and 4, in block 88, plat "A," Salt Lake City survey, to wit: Commencing at a point 4 rods north of the southwest corner of said lot 4, running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to the place of beginning, being a part of what is known as the tithing yard and offices. Also all of the south half of lots 5 and 6, in block 88, plat "A," Salt Lake City survey, being a part also of said tithing yard and offices, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants. } No. 7503.

Petition in intervention.

Now comes James P. Freeze and Spencer Clawson, by leave of the court first had and obtained, file this petition in intervention in the above entitled cause on behalf of themselves and all others who are members of the

Church of Jesus Christ of Latter-day Saints, a voluntary religious association, and for their grounds of intervention allege:

That the members of said church are more than two hundred thousand in number and so numerous that they cannot, without manifest inconvenience and oppressive delays in said action, be brought before the court; that all of said parties have an interest in common with said intervenors in the subject of this petition and the questions involved in this action; wherefore, said interveners file this petition for the benefit of all said members. That the Church of Jesus Christ of Latter-day Saints became, and was a corporation at the time and in the manner related in plaintiff's complaint, and that said corporation was dissolved as therein stated; that said corporation embraced and included all the members of that religious sect or body of religious worshippers known as the Church of Jesus Christ of Latter-day Saints; that from and after said dissolution of said corporation, hitherto all the members *the* of said body or religious worshippers have been and now are organized and existing as a voluntary religious association known as the Church of Jesus Christ of Latter-day Saints; that the members of said voluntary religious association exceed in number two hundred thousand.

That these intervenors and members of said church are equitably the owners of the property mentioned in said complaint and hereinafter described; that the said church is, and has been ever since the 3rd day of March, 1887, a voluntary association for religious and charitable uses and purposes and has the right to own and hold such property, through trustees, to be used for such purposes; that said defendants were in possession of said property at the time it was seized by the United States marshal pursuant to the information proceedings had herein, and that the said property is described as follows, to wit: Part of lots three and four, in block 88, as the same are platted and designated in plat "A," Salt Lake City survey, county of Salt Lake, Territory of Utah, and bounded as follows: Commencing at a point 4 rods north of the southwest corner of said lot 4, running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to place of beginning, and being a part of what is now known as the tithing office and grounds. All the south half of lots five and six in block eighty-eight (88) as the *the* same are platted and designated in plat "A," Salt Lake City survey, in the county of Salt Lake, Utah Territory; said tract comprising two hundred square rods more or less, of surface ground, and being a part of what is known as the tithing office and grounds.

That at the time of the enactment of the law of Congress of July 1st, 1862, mentioned in the complaint, and long prior thereto, the said Church of Jesus Christ of Latter-day Saints, as a religious association, held, possessed, and occupied the above-described real estate, and had a vested right to and interest in the same, and it ever since has had and still has such vested right to and interest in said property; and that such vested right and the defendants' claim to said property are founded upon the following facts, to wit:

The parts of lots three and four, in block 88, plat "A," Salt Lake City survey, mentioned in the complaint and described herein, were taken possession of by the agents of the Church of Jesus Christ of Latter-day

Saints, for the use and benefit of said church when Salt Lake City was first laid out and surveyed, in 1848, and ever since that time have used and occupied by said church as a voluntary sect until it became incorporated as aforesaid, and then as a corporation, and prior to July 1st, 1862, buildings and other improvements of great value had been built thereon by said church. At the time said property was taken possession as aforesaid it was a part of the public domain, and continued to be such until the 21st day of November, 1871, when said land was entered in the townsite of Salt Lake City by the mayor thereof under the act of Congress approved March 2nd, 1867, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," in trust for the inhabitants and occupants thereof. Brigham Young, who was then president and trustee in trust of said corporation, as such trustee and for the use and benefit of said corporation, thereafter duly filed claim for said premises in the probate court of Salt Lake County, Utah Territory, under an act of the legislative assembly of the Territory of Utah, approved February 17th, 1869, entitled
22 "An act prescribing rules and regulations for the execution of the trust," arising under an act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2nd, 1867; and thereafter the said probate court duly adjudicated the same to the said Brigham Young, as such trustee, and subsequently the said real estate was duly conveyed to him, as such trustee, by Daniel H. Wells, mayor of Salt Lake City. In pursuance of said adjudication and in execution of the trust expressed in said patent, in November, 1873, Brigham Young transferred and conveyed said property to George A. Smith, as trustee in trust for the corporation of the Church of Jesus Christ of Latter-day Saints and his successor in office. On the death of said George A. Smith the legal title to said premises vested in Brigham Young, as such successor, and the executors of said Brigham Young transferred and conveyed said property to John Taylor, as trustee in trust for said corporation, who, in April, 1878, transferred and conveyed the same to Edward Hunter in trust for the use and benefit of said corporation. Said Edward Hunter afterwards, to wit, on the 24th day of April, 1886, transferred and conveyed the same to Robert T. Burton in trust for said corporation, who continued to hold said property upon the trusts aforesaid from thence until the dissolution of said corporation.

Sometime in the year 1856 the Church of Jesus Christ of Latter-day Saints took possession of the south half of said lots 5 and 6, block 88, plat "A," of Salt Lake City survey, and placed valuable improvements thereon, and have continued to occupy the same with said improvements down to the present time, and the said lots were a portion of the townsite entry made by the mayor of Salt Lake City, as aforesaid, pursuant
23 to the said act of Congress of March 2nd, 1867.

The said Church of Jesus Christ of Latter-day Saints, by its trustee, Brigham Young, duly filed claim in the probate court of Salt Lake County, Utah Territory, under said townsite act of the legislative assembly of Territory of Utah, approved February 17th, 1869, for the south half of said lots 5 and 6, and the said court duly adjudicated all of said premises to said Brigham Young, and thereafter the mayor of said Salt Lake City, in pursuance of said adjudication and in execution of the trust

expressed in said patent, duly conveyed the same to the said Brigham Young, who was then trustee in trust for said church, and took and held the same under such deed for its use and benefit.

At the time the act of Congress of March 3rd, 1887, mentioned in the complaint, took effect, the legal title to said premises was held by the said Robert T. Burton in trust for the use and benefit of the said Church of Jesus Christ of Latter day Saints.

These intervenors allege that no part of said property was ever acquired or held in violation of the provisions of any law of the United States. But that all said property was acquired as aforesaid for the religious and charitable uses of said church, and the purchase price thereof and the cost of said improvements thereon, were paid from the voluntary contributions made to the said church, from time to time by the members thereof, to be held, managed, and applied by said church through its officers and trustees chosen and elected by the members thereof, to religious and charitable uses and purposes in which the said church and its members were interested;

24 that said property, and the whole thereof, was at all times prior at the time when the same was seized and taken possession of by said receiver, as mentioned in said complaint, held, used, and applied by the said church through its officers and trustees, chosen as aforesaid, to such religious and charitable uses and purposes and not otherwise; that at no time was the same, or any part thereof, used or applied to establish, maintain, aid, support, or encourage the practice of polygamy or plural marriage, or to any other unlawful use or purpose. And that said property was not worth more than ten thousand dollars on the 1st day of July, 1862.

These intervenors say that the plaintiff ought not to be permitted to maintain or prosecute this action, because all the proceedings to forfeit or escheat such property, or any part thereof, are barred by section 1047 of the Revised Statutes of the United States, and the said action did not, nor did the alleged cause of forfeiture mentioned in the complaint, accrue within five years before the commencement of these proceedings or the filing of said complaint, or within five years prior to said dissolution of said corporation.

These intervenors further say that the plaintiff has not, nor has any one in its behalf, the right to forfeit or escheat the property aforesaid, or to maintain said action, for the reason that the said corporation of the Church of Jesus Christ of Latter-day Saints, by its officers and agents, were in possession and occupancy of all of the said premises and property, hereinafter described, prior to and on the 1st day of July, 1862, the date of the passage of said act of Congress, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," approved July 1st,

25 1862, and that thereafter said corporation still continued in the possession and occupancy of said premises and property openly, notoriously, and continuously till, and a long time after the Government of the United States, by deed of grant and for a valuable consideration, in 1872, conveyed said premises and property, with other lands in Salt Lake City, to the mayor thereof, in trust for the use and benefit of the inhabitants and occupants thereof, and that said grant was made to said

mayor under the trust aforesaid, without any reservation in favor of said grantor, the plaintiff in this action; that thereafter the said corporation, the Church of Jesus Christ of Latter-day Saints, by its duly elected and acting trustee, Brigham Young, pursuant to an act of the legislative assembly of the Territory of Utah, approved February 17th, 1869, entitled "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress, entitled "An act for the relief of the inhabitants of cities and towns upon public lands," approved March 2nd, 1867, filed its claim for all of said premises in the probate court of Salt Lake County, Utah Territory, and that the same was thereafter duly adjudicated by said court to said Brigham Young, and that afterwards, to-wit, on the 10th day of January, 1873, for a valuable consideration, the said mayor of Salt Lake City, in pursuance of said adjudication and in execution of the trust expressed in said patent by deed in fee simple, duly conveyed said land to the said Brigham Young, who was then the trustee in trust of said church, and who took and held said premises under said deed in trust for said church, and for its use and benefit; and that by reason of the premises aforesaid the plaintiff was estopped from questioning the right of the late corporation of the Church of Jesus Christ of Latter-day Saints, to acquire and hold said land and premises,
26 and is now barred and estopped from forfeiting or escheating, or attempting to forfeit or escheat, said property, and divert the same from the religious and charitable uses and purposes of said church.

Wherefore your petitioners pray that the plaintiff take nothing by its said action, and that it be decreed that the said property belongs to the unincorporated voluntary religious association known as the Church of Jesus Christ of Latter-day Saints, and that the members thereof be authorized to appoint a trustee or trustees to hold, manage, and apply the said property to the purposes for which it was originally given; that the United States marshal delivered possession of said property, together with its proceeds and income in his hands, to such trustee or trustees as may be named and appointed at a general conference of the members of said church, and for such other and further relief as may be equitable and just.

F. S. RICHARDS,
LE GRAND YOUNG,
DICKSON & STONE,
Attorneys for Intervenors.

Filed November 7th, 1891.

27 In the district court for the third judicial district of Utah Territory, county of Salt Lake.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: Part of lots 3 and 4, in block 88, plat "A," Salt Lake City survey, to wit: Commencing at a point 4 rods north of the southwest corner of lot 4, running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to the place of beginning, being a part of what is known as the tithing yard and offices. Also all of the south half of lots 5 and 6, in block 88, plat "A," Salt Lake City survey, being a part also of said tithing yard and offices, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

Now comes the United States of America, plaintiff above named, and answering the petition in intervention of James P. Freeze and Spencer Clawson, filed herein on this the 7th day of November, A. D. 1891, denies each and every material allegation in said petition contained.

W. H. H. MILLER,
Attorney-General.
CHAS. S. VARIAN,
U. S. Dist. Attorney for Utah.

Filed Nov. 7th, 1891.

27½ In the district court in and for the third judicial district, Territory of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: Part of lots 3 and 4, in block 88, plat A, Salt Lake City survey, to wit: Commencing at a point 4 rods north of the southwest corner of said lot 4, running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to the place of beginning, being a part of what is known as the tithing yard and offices. Also all of the south half of lots 5 and 6 in block 88, as the same are platted in plat A, Salt Lake City survey, being a part also of said tithing yard and offices; and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants. James P. Freeze and Spencer Clawson, intervenors. } No. 5703.

This cause coming on regularly to be heard before the court on the 7th day of November, A. D. 1891, a jury having been; in writing expressly

waived, all the parties appearing by their respective counsel, evidence was adduced and arguments heard, and the cause submitted to the court for its final decision. Now on this day the court, being fully advised in the law and premises makes the following as its

FINDINGS OF FACT:

1st. That during all the time from the 19th day of January, A. D. 1855, to and including the 3rd day of March, A. D. 1887, the Church of Jesus Christ of Latter-day Saints was a corporation for religious and charitable purposes organized and existing under the laws of the
28 Territory of Utah; that on the 3rd day of March, A. D. 1887, said corporation was dissolved.

2nd. That all that certain tract and parcel of land now known and designated in the pleadings herein and in the official survey of Salt Lake City as block 87, plat "A," Salt Lake City survey, commonly known as the Temple block, situated in the city and county of Salt Lake and Territory of Utah, was taken possession of by the agents of the Church of Jesus Christ of Latter-day Saints, then existing as a voluntary religious sect, when Salt Lake City was first laid out and surveyed in 1848, and since said date has been in the possession of and held by said church as a voluntary sect until it became incorporated as aforesaid, and then as a corporation; that at the time the same was taken possession of as aforesaid, it was a part of the public domain, and continued to be such until said land was entered by the mayor of said city, along with other lands, on the 21st day of November, 1871, under the townsite act of Congress entitled "An act for the relief of cities and towns upon the public lands," approved March 2nd, 1867; that on the 1st day of June, 1872, the same was conveyed by the mayor of said Salt Lake City to the trustees in trust of said corporation for the sole use and benefit of said church and corporation, in whom the title remained until the act of Congress of March 3rd, 1887, took effect; that on the 2nd day of March, 1867, the said premises were, ever since, and now are of the value largely exceedings $50,000; that during all of said period the said corporation was the real owner of, and in actual possession of, and held all of said tract of land.

3rd. That the real property described in the title hereof and the pleadings in this action was taken possession of by the agents
29 of the Church of Jesus Christ of Latter-day Saints when Salt Lake City was first laid out and surveyed in 1848, and ever since that time has been used and occupied and held by the said church as a voluntary sect until it became incorporated on the 19th day of January, A. D. 1855, and then as a corporation; and that prior to July first, 1862, buildings and other improvements of considerable value were built thereon by said church corporation; that at the time said property was taken possession of as aforesaid it was a part of the public domain, and continued to be such until the 21st day of November, A. D. 1871, when said land was entered along with other lands under the townsite act of March 2nd, 1867, by the then mayor of Salt Lake City; that Brigham Young, who was then president and trustee in trust of said church corporation, claimed said lands under said townsite law, and it was conveyed to him by the mayor of said Salt Lake City; that in November, 1873, the said

Brugham Young transferred and conveyed said property to George A. Smith as trustee in trust for said corporation of the Church of Jesus Christ of Latter-day Saints and his successor in office; that on the death of said George A. Smith, the legal title to said premises vested in the said Brigham Young as such successor, and afterwards the executors of the said Brigham Young conveyed said property to John Taylor as the trustee in trust for said church corporation; that in April, A. D. 1878, that said John Taylor as trustee aforesaid conveyed the said premises, and the whole thereof, to one Edward Hunter, upon a secret trust for the use and benefit of the said church corporation; that afterwards, to wit, on the 24th day of April, A. D. 1878, the said Edward Hunter transferred
30 and conveyed the same to Robert T. Burton on a secret trust for said corporation, and thereafter, on the 3rd day of March, A. D. 1887, the said Robert T. Burton held the legal title to all and singular the premises aforesaid upon a secret trust for said church corporation, but that during all the times aforesaid, upon the date last aforesaid, the said church corporation was in the actual use, open and notorious, and possession of and holding all of said property.

4th. That all of block 87 in Plat "A," Salt Lake City survey, commonly known as the Temple Block, situate in the city and county of Salt Lake, and Territory of Utah, hereinbefore mentioned, and largely exceeding in value the sum of $50,000, has been heretofore claimed by the late corporation, The Church of Jesus Christ of Latter-day Saints and its successors, The Church of Jesus Christ of Latter-day Saints, an unincorporated body and religious sect composed of all the members of said late corporation, as property held and occupied by the said corporation and its successors, the said unincorporated association and religious sect, exclusively for the purposes of the worship of God, and upon the nomination of the regularly constituted authorities of said unincorporated association as provided by law, has been duly set apart to the said unincorporated association by the supreme court of the Territory of Utah for the benefit of said unincorporated body and religious sect and for the erection and use by them of houses of worship, and for their use and convenience in the lawful exercise of worship according to the tenets of said sect and body, which said property on the 3rd day of March, A. D. 1887, the date of the
31 disssolution of said late corporation, largely exceeded and does now largely exceed in value the sum of $50,000.

5th. That at the date of the acquiring from the United States the legal title to the property in the title hereof particularly described, and commonly known as the tithing grounds and offices, the late corporation of The Church of Jesus Christ of Latter-day Saints had acquired and were holding all and singular the real property described as block 87 in Plat "A" of Salt Lake City survey, consisting of ten acres of land, and commonly known as the Temple Block, and then and since at all times of the value of $50,000 and more.

6th. That no part of the premises mentioned in the title hereof described as part of lots 3 and 4 in block 88, Plat "A," Salt Lake City survey, to wit: Commencing at a point 4 rods north of the SW. corner of lot 4, running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to the place of beginning, being a part of what is known as the tithing yard

and offices; also, all the south half of lots 5 and 6 in block 88, Plat "A," Salt Lake City survey, being a part also of the said tithing yard and offices, was ever held or occupied in any way by the said late corporation of The Church of Jesus Christ of Latter-day Saints, or its successors or trustees, for the purposes of the worship of God or for parsonages connected with any buildings or grounds appurtenant thereto which were so held and occupied, or for burial grounds.

7th. That on the 2nd day of July, 1887, the said Robert T. Burton made a conveyance, in which his wife joined, to himself and the other defendants, William B. Preston and John R. Winder, as trustees, of
32 all the property described in the last findings of fact and the title hereof, but that on the 8th day of October, A. D. 1888, the supreme court of The Territory of Utah, in a cause then pending before it, to which the late corporation of The Church of Jesus Christ of Latter-day Saints and the defendants herein, William B. Preston, Robert Burton, and John R. Winder, as trustees, and all the members of the unincorporated body and religious sect of the Church of Jesus Christ of Latter-day Saints, claiming to be the successors in interest of the late corporation, and appearing by George Romney, Henry Dinwoodey, James Watson, and John Clark, in behalf of themselves and said members, were parties, and of which cause and the parties thereto the said supreme court then and there had jurisdiction, found, adjudged, and decreed that said last-mentioned conveyance was executed without authority, and that no estate in the property set out in said deed passed by the same, and ordered and decreed that said deed was annulled, and cancelled, and set aside, and further adjudged and decreed that all of the real estate mentioned in findings 6 and in the title hereof was, on the 3rd day of March, 1887, the date of the dissolution of said corporation, the property of the said late corporation.

8. That the said late corporation, The Church of Jesus Christ of Latter-day Saints, acquired by purchase all of the property and premises mentioned in the title hereof and in finding 6 after it had acquired and while it was holding real estate in the Territory of Utah of greater value than $50,000, to wit: Block 88 in Plat "A" of Salt Lake City survey, known as the Temple Block aforesaid.

9. That these proceedings were commenced on October 8th, 1888, by filing a general information against the property described in the title hereof and in finding 6; that thereupon monition was issued
33 and the property seized by the marshal, and notice given to all claimants; that no claimants other than the defendants, William B. Preston, Robert Burton, and John R. Winder, trustees, have ever appeared or made claim to the property or any part thereof, except that upon the trial hereof James P. Freeze and Spencer Clawson were permitted to file a petition in intervention whereby they claimed on behalf of themselves and all others who are members of The Church of Jesus Christ of Latter-day Saints, the unincorporated body and religious sect hereinbefore mentioned.

10. That neither of said intervenors, James P. Freeze and Spencer Clawson, and neither of the defendants, William B. Preston, Robert Burton, and John R. Winder, as trustees or otherwise, have any right, title, claim, or interest in or to any of the premises mentioned in the title hereof and finding 6.

AS CONCLUSIONS OF LAW

The court finds that all the real property herein described, particularly in finding 6 and in the title hereof, and known as the tithing grounds and offices, was acquired and, on the 3rd day of March, 1887, the date of dissolution, held by the late corporation of The Church of Jesus Christ of Latter-day Saints in violation of the act of Congress approved July 8th, 1862; that no part thereof was or is held or occupied exclusively for the purposes of the worship of God or of parsonages connected therewith or burial grounds, and it is subject to be forfeited and escheated to the United States, as provided by section 13 of an act of Congress entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes.'"

34 Let judgment be entered accordingly.

C. S. ZANE, *Judge.*

Dates Dec. 4th, 1891.
Attest:

HENRY G. MCMILLAN, *Clerk,*
By GEO. D. LOOMIS, *Deputy.*

Filed December 5th, 1891.

35 In the district court of the third judicial district, Territory of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory 'f Utah, particularly described as follows: Part of lots 3 and 4 in block 88, Plat "A," Salt Lake City survey, to wit: Commencing at a point 4 rods north of the southwest corner of said lot 4; running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to the place of beginning, being a part of what is commonly called the tithing yard and offices. Also all of the south ½ of lots 5 and 6 in block 88, as the same are platted and designated in Play "A," Salt Lake City survey, being a part also of tithing yard and offices, and William B. Preston, Robert Burton, and John R. Winder, trustees, defendants; James P. Freeze and Spencer Clawson, intervenors. } No. 7503.

This cause came on regularly to be heard on the 7th day of November, A. D. 1891, before the court sitting without a jury, which was expressly waived in writing by the respective parties, whereupon evidence was adduced and counsel heard and the cause submitted to the court for its

final decision. Afterwards, being fully advised in the law and
36 the premises, the court delivers its decision and makes its findings of fact and conclusions of law, which were filed, and orders that judgment be entered accordingly.

Wherefore, by reason of the law and the findings aforesaid, it is ordered and adjudged that the defendants, William B. Preston, Robert Burton, and John R. Winder, trustees; and James P. Freeze, and Spencer Clawson, intervenors herein, have no right, title, interest, or claim of any kind or description, and none of the members of the voluntary religious association known as the Church of Jesus Christ of Latter-day Saints have any right, title, interest, or claim of any kind or description in or to any of the premises hereinafter mentioned and described, or the possession thereof, or any part thereof.

And it is further ordered and adjudged that the following lands and premises situate in the city and county of Salt Lake and Territory of Utah, and commonly known as the tithing yard and offices, and the whole thereof, be forfeited and escheated to the plaintiff, the United States of America, as real property acquired and held on the 3rd day of March, A. D. 1887, by the late corporation, the Church of Jesus Christ of Latter-day Saints, in violation of the laws of the United States; that is to say:

Certain real estate situate in the city and county of Salt Lake, Territory of Utah, particularly described as follows: Part of lots 3 and 4 in block 88, Plat "A," Salt Lake City survey, to wit: Commencing at a point 4 rods north of the SW. corner of said lot 4; running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods to the place of beginning, being a part of what is commonly known as the tithing yard and offices. Also all of the south half of lots 5 and 6 in block 88, as the same are platted
37 and designated in Plat "A," Salt Lake survey, being a part also of said tithing yard and offices; and the said lands and premises and the whole thereof are hereby forfeited and escheated to the said United States of America.

And it is further ordered and adjudged that the plaintiff do have and recover from the defendants, William B. Preston, Robert Burton, and John R. Winder, trustees, the costs of this proceeding herein incurred, taxes at dollars ($).

Dated this 4th day of December, A. D. 1891.

C. S. ZANE, *Judge.*

Filed Dec. 5th, 1891.

38 In the district court in and for the third judicial district, Territory of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: Part of lots 3 and 4 in block 88, Plat "A," Salt Lake City survey, to wit: Commencing at a point 4 rods north of the southwest corner of said lot 4; running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence 3½ rods; thence west 6 rods to the place of beginning, being a part of what is commonly known as the tithing yard and offices. Also all of the south half of lots 5 and 6 in block 88, as the same are platted and designated in Plat "A," Salt Lake City survey, being a part also of said tithing yard and offices, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants; James P. Freeze and Spencer Clawson, intervenors. } No. 7503.

Notice of appeal.

To the plaintiff and its attorney', W. H. H. Miller and Charles S. Varian:

Please take notice that the defendants and intervenors in the above-entitled action hereby appeal to the supreme court of this Territory from the judgment therein made and entered in said district court of the third judicial district of the Territory of Utah, on the 4th day of December, 1891, in favor of plaintiff in said action and against said defendants and inte'venors, and from the whole thereof.

To the clerk of the said district court.

F. S. RICHARDS,
LE GRAND YOUNG,
W. H. DICKSON,
Attorneys for Defendants & Intervenors.

Filed November 19th, 1892.

39 No. 7503.

Assignment of errors.

First. The court erred in deciding that the property named in the title to this action, and in paragraph six of the findings of fact, was or is subject to forfeiture or escheat for the reason that the evidence disclosed, and the same is incorporated in the findings of fact, that said Church of Jesus Christ of Latter-day Saints had a vested interest in said property on and before July 1st, 1862.

Second. The court erred in deciding that said property was or is subject to forfeiture or escheat for the reason that it was disclosed by the evidence and is incorporated in the findings of fact that said plaintiff could not legally bring or prosecute said action, because all proceedings to forfeit or escheat said property or any part of it was and is barred by section 1047 of the Revised Statutes of the United States, nor did the said action or the cause of forfeiture accrue within five years before the commencement of said proceedings or five years before the filing of the complaint in this action, or within five years prior to the dissolution of said corporation; nor was said action to forfeit and escheat said property begun within five years prior to the time said penalty and forfeiture accrued.

Third. The court erred in deciding that plaintiff could escheat or forfeit said real property, named in the caption of plaintiff's complaint, for*m* the reason that it was disclosed by the evidence and is incorporated into the findings of fact that said late corporation, the predecessor of the said Church of Jesus Christ of Latter-day Saints, for whom the defendant held the same and the predecessor for whom said James P. Freeze and Spencer Clawson intervened, was in possession of said premises, openly and
40 notoriously claiming the same at the date of said act of Congress passed July 1st, 1862, and from then continuously till said land was entered by the mayor of Salt Lake City in November, 1871, in trust for the occupants thereof, under the act of Congress dated Mar. 2nd, 1867, and that the title so taken by said mayor was without reserve for the occupants, whoever they might be, and that the said plaintiff, by reason of the premises was, and at all times has been, and now is, estopped from claiming the right to escheat or forfeit said lands or any part thereof.

Fourth. The court erred in this, said decree is unsupported by the evidence and findings of fact, for the reasons shown in the errors above set forth.

F. S. RICHARDS,
LE GRAND YOUNG,
W. H. DICKSON,
Attorneys for Defendants and Interveno's.

Filed November 30th, 1892.

41 In the district court of the third judicial district, Territory of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN SALT LAKE City, county of Salt Lake and Territory of Utah, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants; James P. Freeze and Spencer Clawson, intervenors.

We, the undersigned, attorneys for the plaintiff and defendants and intervenors, hereby certify that the foregoing transcript of the record and the copies of judgment roll and notice in the above-entitled case are true

and correct, and that an undertaking on appeal in said case in the usual and due form has been filed with the clerk of the above-entitled court on the day of November, 1892.

Dated December 3rd, 1892.

C. S. VARIAN,
Attorney for Plaintiff.
F. S. RICHARDS,
LE GRAND YOUNG,
W. H. DICKSON,
Attorneys for Defendants and Intervenors.

(Tithing Office case.)

42 In the supreme court of Utah Territory, regular June term, 1893.

THURSDAY, *June 15th.*

THE UNITED STATES OF AMERICA
vs.
CERTAIN REAL ESTATE * * * KNOWN AS the Tithing Yard and Offices, and Wm. B. Preston et al., trustees, defendants; James P. Freeze et al., intervenors, appellants.

This cause coming on regularly for hearing was argued by Messrs. Le Grand Young, W. H. Dickson, and Franklin S. Richards, in behalf of appellants, and by John A. Marshall, esq., and Hon. John W. Judd, United States attorney, in reply, was submitted and taken under advisement.

43 In the supreme court of Utah, regular June term, 1893.

THURSDAY, *August 31st.*

THE UNITED STATES OF AMERICA
vs.
CERTAIN REAL ESTATE * * * KNOWN AS the Tithing Yard and Offices, and Wm. B. Preston et al., trustees, defendants, James P. Freeze et al., intervenors, appellants. 326.

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, reversed, and this cause is remanded to said district court with directions to dismiss the suit.

Thereupon counsel for the United States, respondent herein, prayed the allowance of an appeal to the Supreme Court of the United States, and it was ordered that such appeal as prayed for be and is hereby allowed.

44 In the supreme court in and for the Territory of Utah.

UNITED STATES OF AMERICA *vs.* CERTAIN REAL ESTATE KNOWN AS THE TITHING yard and offices and William B. Preston, et al., appellants.	No. 326.

Opinion.

SMITH, J.:

This is an action begun by the United States against certain real estate belonging to the late corporation of Jesus Christ of Latter-day Saints to forfeit and escheat the property. The property involved in this particular action is part of lots three (3), four (4), five (5), and six (6), block eighty-eight (88), Plat "A," Salt Lake City survey, commonly known as and called the tithing yard and offices. The defendants, William B. Preston, Robert T. Burton, and John R. Windor, are alleged to be claimants as trustees of the property for the voluntary religious association known as the Church of Jesus Christ of Latter-day Saints. James P. Freeze and Spencer Clawson intervened in behalf of themselves and all other members of the religious association known as the Church of Jesus Christ of Latter-day Saints, claiming that the property belonged to that religious body. The defendants, Preston, Burton, and Winder, answered the complaint. Freeze and Clawson, by their petition in intervention, set up substantially the same facts as alleged in the answer of the trustees.

The case was tried by the court without a jury. Findings of fact
45 and conclusions of law were made and judgment entered in favor of the United States, escheating and forfeiting the property. The defendants and intervenors appeal. Two assignments of error are made which we deem it necessary to consider upon this appeal:

First. That the court erred in deciding that the property was subject to forfeiture and escheat, for the reason that upon the facts found it appeared the Church of Jesus Christ of Latter-day Saints had a vested interest in said property on or before July 1st, 1862.

Second. The court erred in deciding that the property was subject to forfeiture or escheat, for the reason that upon the facts found all proceedings to forfeit or escheat the property were barred by section 1047 of the Revised Statutes of the United States.

This section of the Revised Statutes was pleaded both by the defendants and the intervenors in bar of the action. We will consider these objections in the inverse order in which they are stated. Section 1047 relied upon is as follows: "No suit or prosecution for any penalty or forfeiture pecuniary or otherwise accruing under the laws of the United States shall be maintained except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued." The forfeiture claimed in this case arises under section 3 of the act of July 1st, 1862, which is as follows: "That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of a

greater value than $50,000.00, and all real estate acquired or held by any such corporation or association contrary to the provisions of this act
46 shall be forfeited and escheated to the United States: Provided, That the existing vested rights in real estate shall not be impaired by the provisions of this section." The title to the land in controversy was acquired by the mayor of Salt Lake City in November, 1871. In 1872 it was conveyed to the trustees of the corporation of the Church of Jesus Christ of Latter-day Saints for the use and benefit of said church. Title remained in said trustees until the third of March, 1887. It is claimed by the appellants that more than five years having elapsed since the perfect title to the property was acquired by the church that no action can now be prosecuted by the United States to forfeit or escheat the property. We have been cited to no case upon this question exactly like the one at bar. Several cases have been cited in which it is held that section 1047 applied to debts and civil actions and forfeitures as well as to criminal ones. It was so held in the case of Adams vs. Woods, 2 Cranch., 336, which was a suit to enforce a penalty founded on the act of the 22nd of March, 1794, First Statutes at Large, 347, prohibiting the slave trade.

It was held that the section was barred, not having been begun within the period prescribed by the statute. Marshall, C. J., discussing the question, says: "It is pretended that the prosecutions limited by this law are those only which are carried on in the form of an indictment or information, and not those where the penalty is demanded by an action of debt. But if the words of the act be examined they will be found to apply not only to any particular mode of proceeding, but generally to any prosecution, trial, or punishment for the offense, and the court held that the action of debt for the penalty was a prosecution and was barred by the statute of limitation. We think section 1047 include civil as well as criminal pro-
47 ceedings. But the difficulty in the case at bar is that the language of section three of the act of July 1st, 1862, is that all real estate acquired or held by any such corporation or association shall be forfeited, etc. Counsel for appellant do not deny that the property in question was held in violation of this statute within five years preceding the commencement of this suit. The cases most nearly in point, it seems to us, are those arising under the internal-revenue laws, where proceedings in rem for forfeiting real estate are repeatedly provided for. For instance, land becomes forfeited for being used for the purposes of distillery where the required bond has not been given. (Section' 3281–3260, Revised Statutes of the United States.) Under such statutes it has been frequently held that the property is subject to forfeiture on account of continued use of it, notwithstanding the use may have begun more than five years before the commencement of the action. In contemplation of law the land itself is guilty, and it is the guilt of the land that makes it forfeitable by reason of its being employed in an unlawful use.

Waples' Proceedings in rem, sec. 178, says: "Lands are forfeited for use in contravention of law. The violation of law by the use of the land is in some instances by the owner, but not necessarily so. It is not the owner's guilt but the land's guilt by its use that renders it forfeit. There is an offending person and an offending thing, but the proceedings are against the latter."

At section 182 the same author analyzing section 3 of the act of July 1st, 1862, above cited, says: "The thing to be seized and condemned is Territorial real estate worth more than $50,000. The offense of the thing is being acquired or held by the religious or charitable association to the amount forbidden. The jus in re arises from the contravention of law."

We believe this to be a proper construction of the statute before us,
48 that the property acquired or held in violation of the law within five years before the commencement of the action is subject to forfeiture.

The remaining question which we deem it necessary to consider is whether or not the property involved in this action comes within the proviso found in section 3 of the act of July 1st, 1862.

That proviso is as follows: "That existing vested rights in real estate shall not be impaired by the provisions of this section." The findings of fact in this case show that the land in controversy in this action was first laid out in 1848; then taken possession of by the representatives of the church known as the Church of Jesus Christ of Latter-Day Saints. This church was a voluntary sect until January 19, 1855, when it was incorporated, and that the corporation subsequently possessed it up to and including July 1st, 1862; that buildings and other improvements of considerable value were built thereon by the church, and that the church was in actual possession and use of the property and the improvements thereon until the 1st day of July, 1862. That in November, 1871, the land was entered under the town-site act by the mayor of Salt Lake City. That Brigham Young, who was then president of the church, claimed the land under the town-site law, and it was conveyed to him by the mayor of said city as trustee for the church aforesaid; that it afterwards passed by mesne conveyance to Robert T. Burtonm, who held the title on the 3rd day of March, 1887, as trustee for the church. The question arises whether or not this parcel of land is forfeitable to the Government of the United States under sec. 3 of the act of Congress of July 1st, 1862, which we have already quoted at length in this opinion. It is claimed by counsel for the Government that inasmuch as the town-site law had not been extended over the Territory of Utah at the time of the passage of this act,
49 nor had the public surveys been extended over the lands in controversy, that the church had not, nor was it possible for it to have, acquired any vested interest in the lands in controversy at or prior to the time this act took effect; that it had no interest which the Government was bound to respect. We do not deem it necessary to decide whether or not Congress had authority under the Constitution to ignore a right such as the church had in these lands in July, 1862. The real question is whether or not this act manifests an intention on the part of Congress to preserve or ignore that right, such as it was. We seriously doubt whether Congress has that unlimited control over the property rights of persons upon the public domain which counsel for the Government insist upon. The city of Salt Lake was founded in 1847. In 1850 the Territorial government was organized. Congress passed the organic act and thereby extended an invitation to the citizens of the Government to establish their homes in the Territory. Under this invitation citizens took up their abode here in great numbers prior to the passage of the act of 1862. It was, of course, undisputably necessary that these settlers should found

cities and villages at once and enter into possession of portions of the public domain, cultivate, build upon and otherwise improve the same, notwithstanding that neither the town-site law or the public surveys had been extended over the Territory. In 1862 Salt Lake City was a town of several thousand families, and large sums had already been expended in buildings and other improvements by the inhabitants within the corporate limits of the city. Now it is claimed that Congress had the power in 1862 to have withdrawn all lands within the city from sale and to have driven the inhabitants of the city therefrom. We think it may well be questioned whether such action on the part of the Government would not be a violation of that provision of the Constitution which ordains that no one shall be deprived of his life, liberty, or p'operty save by due process of law, but it is not necessary for us to decide this question. In our
50 view of this case, if it be conceded that Congress has the authority under the Constitution to perpetrate such an act of cruelty and oppression towards its citizens as that above indicated, it is certainly not to be lightly presumed that the Government contemplated any such wrong or injustice. This brings us to the question of what is the meaning of the provisi "that existing vested rights in real estate shall not be impaired by the provisions of this section."

In Cooley's Constitutional Limitations, page 438, the author says: "But as a shield of protection the term vested rights is not used in any narrow or technical sense, or as importing legal power or control merely, but rather as impairing a vested interest which it is right and equitable that the Government should recognize and protect, and of which the individual cannot be deprived arbitrarily without injustice." It is clear by the decisions of the Supreme Court of the United States that the church had at the time of the passage of the act of 1862, an interest in the lands in controversy in this action which the law recognizes and such as the courts of the Government would enforce and protect. It had a right of possession which the court would have enforced against any one who disturbed it in its possession. It had an interest such as it could encumber by way of mortgage, and the Federal courts would have enforced the mortgage. It had an interest such as it could contract to sell and convey, and specific performances of such contract would have been enforced by the courts.

See, Stringfellow vs. Caine, 99 U. S., 610; Hussey vs. Smith, 99 U. S., page 20; Lamb vs. Davenport, 18 Wal., 307.

An examination of these cases will show that, according to the
51 rule established in the Supreme Court of the United States, if in 1861 the church had entered into a contract with one then an occupant of the tithing-house property for the purchase thereof upon a proper tender being made, the vendor had refused to convey, the courts of the United States would have compelled a conveyance; or had the church refused to accept a conveyance and make payment according to contract, the vendor could have had a decree enforcing payment. Suppose the church had acquired the interest which it had in the tithing-house property at the time of the passage of the act of 1862 in the manner just suggested, it is clear that it would have had no better or greater interest or right than it, in fact, had at that time. And yet if the contention of counsel for the Government is correct the same court which rendered the decree enforcing such contract against the church would be compelled

also to hold that the church had no estate or interest in the property vested or otherwise. In the case of Lamb vs. Davenport, 18 Wal., 307, the defendant, Davenport, had acquired possession by purchase of certain lots upon public lands of the United States in the city of Portland, Oregon. After the title had been perfected the owner of the title undertook to recover the property. Davenport defended upon the ground that he was the equitable owner. Mr. Justice Miller in delivering the opinion of the court says: "The equity which Davenport sets up in his crossbill arises from transactions antecedent to the issue of the patent certificate of Lownsdale, and, indeed, antecedent to the enactment of the donation law of Congress, under which Lownsdale's title originated. It is not necessary to recite in this opinion all of those transactions. It is sufficient here to say that several years before any act of Congress existed by which title to the land could be acquired, settlement on and cultivation of a large tract of lands, which includes the lots in controversy, had been made and a town laid off into lots and lots, sold, and that these are a part of the
52 present city of Portland. Of course no legal title vested in any one by these proceedings, for that remained in the United States, all of which was well known and undisputed; but it was equally well known that these possessory rights and improvements placed on the soil were by the policy of the Government generally protected, so far at least as to give priority of the right to purchase whenever the land was offered for sale, and where no special reason existed to the contrary. And though these rights or claims rested on no statute or any positive promise, the general recognition of them in the end by the Government, and its disposition to protect the meritorious actual settlers who were the pioneers of emigration in the new Territories, gave a decided and well-understood value to these claims." And so we find here: The possessory rights of the several occupants, including the church, of lots in the city of Salt Lake, together with the improvements thereon at the time of the passage of the act of 1862, had a well understood value. And it was this valuable estate or interest which Congress intended to preserve unimpaired by the proviso of section 3 of the act of July 1st. It is evident that it was not the intention of the Government by its legislation to disturb or in any manner interfere with any interest, whatever the nature thereof might be, which had been acquired prior to the passage of the act. The act looked to the future only; this much is apparent from the face of it. If we look to the debates in Congress upon the passage of the law we find that such was unquestionably the general purpose of the framers of this act. Section 3 of the act was an amendment reported by the Judiciary Committee of the Senate to the House bill. In the Congressional Globe of 1862, page 2506, will be found the statement of Senator Bayard of that committee. In reporting this section without quoting his language it is sufficient to say that he declares clearly the purposes of Congress
53 is to prevent the church from acquiring any other or further property then that it then possessed, except it be within the limitation of the section. We are aware of the fact that the arguments of the legislators in debate on the passage of a law can not be resorted to for the purpose of giving a meaning to the terms found in the statute, but they may be resorted to in ascertaining the general object of the legislative enactment.

See opinion of Justice Field in Ah Kow vs. Noonan, 5 Sawyer, 560.

Again, this is a penal statute, and according to a fundamental rule of interpretation it is to be strictly construed against the Government, and it is to be liberally construed in favor of the person or corporation sought to be charged with its penalties. As was said in Chase vs. N. Y. Central R. R. Co., 26 N. Y., 525: "In statutes giving a penalty, if there be reasonable doubt of the case made upon the trial or in the pleadings coming within the statutes, the party of whom the penalty is claimed is to have the benefit of such doubt." Now, if this proviso is not intended to preserve and protect just such a right as the church had in this parcel of land, it is entirely clear that there is nothing which it could preserve or protect, and this must have been known to Congress. While the language of the section is general, it is a matter of common knowledge that is was aimed at the Mormon Church in Utah. As was said by Mr. Justice Field in the case just cited in the 5th Sawyer, "the class character of this legislation is none the less manifest because of the general terms in which it is expressed. We can not shut our eyes to matters of public notoriety and general cognizance. When we take our seat upon the bench we are not struck with blindness and forbidden to know as judges what we see as men, and when an ordinance so general in its terms
54 only operates upon a special race, sect, or class, it being universally understood that it is to be enforced against that race, sect, or class, we may justly conclude that it was the intention of the body adopting it that it should have such operation and treat it accordingly." There was no United States land office established in Utah until long after 1862. Congress is presumed to have known that the legal title to no single foot of land in the Territory had passed from the Government to any individual or corporation at the time this law took effect. As we have shown, it was intended to effect only the rights and interests of the Mormon Church in Utah. It can not be seriously claimed that the purpose of Congress in the proviso of section 3, under the circumstances, was to preserve and protect only some legal vested estate or interest in lands, for the reason that it was impossible to do this. The church against which the legislation was directed could not have prior to that time acquired any such interest. We are of opinion that this property involved in this section was not subject to forfeiture or escheat under the provisions of the act of 1862, and that the judgment of the court below should be reversed and the case remanded with directions to dismiss the action, and it is so ordered.

We concur: Minor, J.; Bartch, J.

(Endorsed:) Filed in the supreme court Aug. 31st, 1893, at Salt Lake City, Utah. Jos. P. Bache, clerk.

55 By the honorable Charles S. Zane, chief justice of Utah, to certain real estate situate in the city and county of Salt Lake, Territory of Utah, particularly described as follows: Part of lots 3 and 4, in block 88, plat "A," Salt Lake City survey, to wit, commencing at a point 4 rods north of the southwest corner of lot 4 and running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods; and thence west 6 rods to the place of beginning, being a part of what is known as the tithing yard and offices, and William B. Preston, Robert T. Burton, and John R.

Winder, trustees, defendants. Also all of the south half of lots 5 and 6, in block 88, plat A, Salt Lake City survey, being a part also of said tithing yard and offices and James P. Freeze and Spencer Clawson, intervenors, and to Franklin S. Richards, Le Grand Young, and W. H. Dickson, esqs., their attorneys, greeting:

Whereas the United States of America has lately appealed to the Supreme Court of the United States from a judgment and decree rendered in the supreme court of Utah Territory in favor of you, the said land, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, and James P. Freeze and Spencer Clawson, intervenors;

You are, therefore, hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at the city of Washington, D. C., within sixty (60) days from date of this citation, to do and receive what may pertain to justice to be done in the premises.

Given under my hand at the city of Salt Lake, in the Territory of Utah, this 3rd day of October, A. D. 1893.

[SEAL.]

C. S. ZANE,
Chief Justice of Utah.

Attest:

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

Due service of a copy of the within citation admitted this 4th day of October, A. D. 1893.

LE GRAND YOUNG,
F. S. RICHARDS,
W. H. DICKSON,
Attorneys for Respondents.

56 TERRITORY OF UTAH,
County of Salt Lake, ss:

Roman Cannon, being duly sworn before me, says, that he is a deputy United States marshal in and for the Territory of Utah; that on the 4th day of October, A. D. 1893, between the hours of 10 a. m. and 5 p. m. of said day, he served the within citation upon Le Grand Young, esq., at his office in Salt Lake City, Utah, by leaving a copy of same with said Young and secured his signature to the within original citation.

ROMAN CANNON.

Sworn and subscribed to before me this 4th day of October, A. D. 1893.

[SEAL.]

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

57 (Indorsed:) Supreme court of Utah. The United State vs. Certain Real Estate * * * known as the Tithing Yard, etc., etc., et al. Appellant's citation. Original. Filed in the supreme court, Oct. 4, 1893, at Salt Lake City, Utah. Joseph P. Bache, clerk.

58 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: Part of lots 3 and 4 in block 88, Plat A, Salt Lake City survey, to wit: Commencing at a point 4 rods north of the southwest corner of lot 4 and running thence north 16 rods; thence east 20 rods; thence south 12½ rods; thence west 14 rods; thence south 3½ rods, and thence west 6 rods to the place of beginning, being a part of what is known as the tithing yards and offices, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants. Also all of the south half of lots 5 and 6 in block 88, Plat A, Salt Lake City survey, being a part also of said tithing yard and offices; and James P. Freeze and Spencer Clawson, intervenors and respondents.

Now comes the United States of America, by its attorneys, and says: That in the record and proceedings in the above-entitled matter there is manifest error in this, to wit: That the supreme court of Utah Territory erred in its judgment or decree herein in directing the complaint in this action to be dismissed. The said judgment or decree was based on the alleged reason that the late corporation, The Church of Jesus Christ of Latter-day Saints, had a vested right to the premises described in the complaint in this action prior to the first day of July, 1862, whereas it appears that the title thereto was acquired under the town-site act of the United States of March 2nd, 1867, and that prior to July 1st, 1862, the said premises had not been surveyed nor brought into market, nor had the said late corporation any right thereto.

2. The supreme court of Utah Territory erred in its judgment
59 or decree herein in directing the complaint in this action to be dismissed for the reason that the appeal to said supreme court was on the judgment roll alone, and that its said decree is not supported by said judgment roll nor by the findings of fact therein nor any of them, but the same is in direct contradiction to said findings of fact.

Wherefore the said United States of America prays that the judgment and decree of the supreme court of Utah Territory be reversed and that said court be directed to affirm the judgment and decree herein entered by the district court of the third judicial district of Utah Territory.

JOHN A. MARSHALL,
Attorney for Appellant.

60 (Indorsed:) 326. In the Supreme Court United States. The United States of America, app'l't, vs. Certain real estate, etc., and Wm. B. Preston et al., defendants, and James P. Freeze et al., inter-

venors, respondents. Assignment of errors and prayer for reversal. Filed Sept. 14th, 1893. Joseph P. Bache, clerk supreme court of Utah Territory.

61 UNITED STATES OF AMERICA,
Territory of Utah, ss:

I, Joseph P. Bache, clerk of the supreme court of Utah, in pursuance of appeal allowed in the case of the United States of America, respondent, vs. Certain real estate * * * known as the tithing yard and offices and Wm. B. Preston et al., trustees, defendants, James P. Freeze et al., intervenors, appellants, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, assignment of errors, supersedeas bond, and bond for costs, together with the original citation, all in and of said court in said cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, assignment of errors, supersedeas bond, and bond for costs is a full, true, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of Utah Territory, this 9th day of October, A. D. 1893, at Salt Lake City, Utah.

[SEAL.]

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

(Indorsement on cover:) Case No. 15461. Term No. 609. The United States, appellant, vs. Certain real estate known as the tithing yard and offices & William B. Preston et al., trustees. Utah Territory supreme court. Filed December 4, 1893. Supreme Court U. S. Clerk's office. Received Dec. 4, 1893.

Office Supreme Court, U. S.
FILED
APR 13 1896
JAMES H. MCKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

CERTAIN REAL ESTATE KNOWN AS THE GARDO House and Grounds, etc., et al., Appellants, v. THE UNITED STATES. } No. 298.

THE UNITED STATES, APPELLANT, v. CERTAIN REAL ESTATE KNOWN AS THE GARDO House and Grounds, etc., et al. } No. 299.

CERTAIN REAL ESTATE KNOWN AS THE CHURCH Farm, et al., Appellants, v. THE UNITED STATES. } No. 300.

CERTAIN REAL ESTATE KNOWN AS THE COAL Lands, et al., Appellants, v. THE UNITED STATES. } No. 301.

THE UNITED STATES, APPELLANT, v. CERTAIN REAL ESTATE KNOWN AS THE TITHing Yard and Offices, et al. } No. 302.

MOTION TO REMAND.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

CERTAIN REAL ESTATE KNOWN AS THE GARDO House and Grounds, etc., et al., Appellants, v. THE UNITED STATES. — No. 298.

THE UNITED STATES, APPELLANT, v. CERTAIN REAL ESTATE KNOWN AS THE GARDO House and Grounds, etc., et al. — No. 299.

CERTAIN REAL ESTATE KNOWN AS THE CHURCH Farm, et al., Appellants, v. THE UNITED STATES. — No. 300.

CERTAIN REAL ESTATE KNOWN AS THE COAL Lands, et al., Appellants, v. THE UNITED STATES. — No. 301.

THE UNITED STATES, APPELLANT, v. CERTAIN REAL ESTATE KNOWN AS THE TITHing Yard and Offices, et al. — No. 302.

MOTION TO REMAND.

Comes now the Solicitor-General, on behalf of the United States in the above-entitled causes, and calls to

the attention of the court the joint resolution of Congress, approved March 28, 1896, providing for the disposition of certain property which is involved in these cases, as follows:

[PRIVATE RESOLUTION—No. 3.]

JOINT RESOLUTION providing for the disposition of certain property now in the hands of the receiver of the Church of Jesus Christ of Latter-Day Saints.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the real estate now in the hands of the receiver of the late corporation of the Church of Jesus Christ of Latter-Day Saints, and all the rents, issues, and profits arising therefrom, which includes all the money held by him, be, and the same are hereby, granted and conveyed to the Church of Jesus Christ of Latter-Day Saints, the expenses of the receivership to be allowed by the supreme court of the State of Utah, being first paid, and said receiver, after the payment of said expenses, is hereby required to deliver the said property and money to the person or persons constituting the first presidency of said Church of Jesus Christ of Latter-Day Saints, or to such person or persons as he or they may designate.

Approved, March 28, 1896.

And respectfully moves the court to remand the cases to the district court of the United States for the district of Utah for such further proceedings as to law and justice may appertain, in conformity with the provisions of the aforesaid resolution of Congress.

HOLMES CONRAD,
Solicitor-General.